



STATE OF ARKANSAS
**Department of Finance
and Administration**

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April 20, 2007

Charlene Young-Hauser
DHHS Program Administrator
Contract Support Section
Slot W345, Box 1437
Little Rock, AR

Re: Advisory Opinion # 483-07-02

Dear Ms. Young-Hauser:

This letter is in response to your request for an advisory opinion in accordance with A.C.A. § 19-11-715(b). Your request for an advisory opinion is based on the following facts:

1. The Department of Health and Human Services (DHHS) has a Professional/ Consultant Services contract with Emeritus Corp. d/b/a Bock Associates, Inc.
2. Emeritus Corp. d/b/a Bock Associates, Inc. would like to subcontract with an individual who is employed by the University of Arkansas for Medical Sciences (UAMS).
3. You are requesting an opinion as to whether Emeritus Corp. d/b/a Bock Associates, Inc. may sub-contract with a UAMS employee to provide the services under contract.

A.C.A. § 19-11-1001, et. seq., addresses "Professional and Consultant Services Contracts." Pursuant to A.C.A. § 19-11-1001(5), a "Professional Services Contract" is a contract "between a state agency and a contractor . . ." The definition of "Contractor" provided at A.C.A. § 19-11-1001(2) specifically excludes "state employees occupying regular full-time or part-time or extra help positions provided by law." "Employee" is defined as "an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing professional services for any state agency."

An "employee" of UAMS therefore does not meet the definition of "contractor" and is precluded from entering into a "Professional Services Contract" with a state agency.

Furthermore, section 4A of the Rule Implementing Governor's Executive Order 98-04 prohibits "PROFESSIONAL OR CONSULTANT SERVICES CONTRACTS BETWEEN AGENCIES AND STATE EMPLOYEES [].".

In the case at hand, the question is whether Emeritus Corp. d/b/a Bock Associates, Inc. may sub-contract with a UAMS employee to provide the services under contract.

While there is no specific provision of law precluding a state employee from sub-contracting with a contractor to provide professional or consultant services, to allow a state employee to subcontract with a contractor who provides professional or consultant services to a state agency so that the state employee

could then provide the professional or consultant services to the state agency would circumvent the purpose of the statute. A state employee can not escape the prohibition against contracting with a state agency to provide professional or consultant services by subcontracting with the primary contractor.

Therefore, Emeritus Corp. d/b/a Bock Associates, Inc may not sub-contract with an employee of UAMS to provide services.

The Arkansas Code and Governor's Executive Order 98-04 apply to professional and consultant services contracts paid by state appropriated funds. The prohibition does not apply in the event that the money used to pay the employee is from a source other than state appropriated funds.

This advisory opinion is issued in accordance with A.C.A. § 19-11-715(b). Compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Act and of Governor's Executive Order 98-04.

Sincerely,

Richard A. Weiss

CC:
Joe Giddis, OSP